

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DINA TILVES,

Plaintiff,

-against-

ACTING COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION AND ORDER

17 Civ. 0824 (ER)

Ramos, D.J.:

Dina Tilves (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g), challenging the decision of the Commissioner of Social Security (“Commissioner”) denying her application for disability insurance benefits (“DIB”). Pending before the Court is the parties Joint Stipulation, filed in lieu of separate cross-motions for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Doc. 14. On December 20, 2017, Magistrate Judge Katharine H. Parker issued a Report and Recommendation (“R&R”), recommending that Plaintiff’s motion be denied and the Commissioner’s motion be granted.

For the reasons stated herein, the Court ADOPTS the R&R and directs the entry of judgment as recommended.

I. Background

Plaintiff filed for DIB on July 8, 2013, alleging disability on the basis of various ailments including spinal stenosis, spondylolisthesis, scoliosis, chronic pain, sleep disorder, and dizziness from medication, with an onset date for her disability of March 23, 2012. Doc. 10 at 173-74, 197. The Social Security Administration (“SSA”) denied her application on August 29, 2013 on the grounds that her medical conditions were not severe enough to render her unable to work. *Id.*

at 106, 109. After timely requesting a hearing, Plaintiff appeared before an Administrative Law Judge (“ALJ”) on February 24, 2015. *Id.* at 36-96, 126. On June 25, 2015, the ALJ confirmed the denial of benefits, finding that Plaintiff was not disabled within the meaning of the Social Security Act for the period of March 23, 2012 through June 25, 2015. *Id.* at 22-35. Plaintiff appealed the ALJ’s decision to the Social Security Appeals Counsel, which denied Plaintiff’s request for review on December 28, 2016. *Id.* at 1. Plaintiff filed the instant action on February 3, 2017. Doc. 1. On May 10, 2017, Judge Parker directed the parties to submit a Joint Stipulation in lieu of motions for judgment on the pleadings. Doc. 9. On September 7, 2017, the parties submitted their Joint Stipulation. Doc. 14.

On December 20, 2017, Judge Parker issued her R&R, recommending that judgment be entered in favor of the Commissioner. R&R at 12. Specifically, Judge Parker found that the ALJ’s determination that Plaintiff was not disabled was supported by substantial evidence. *Id.*

Judge Parker noted that objections, if any, would be due fourteen days from service of the R&R and that failure to timely object would preclude later appellate review of any order of judgment entered. *Id.* at 12-13. Neither the Plaintiff, nor the Commissioner filed objections. They have therefore waived their right to object to the R & R. *See Dow Jones & Co. v. Real-Time Analysis & News, Ltd.*, No. 14 Civ. 131 (JMF) (GWG), 2014 WL 5002092, at *1 (S.D.N.Y. Oct. 7, 2014) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008).

II. Standard of Review

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise “specific,” “written” objections to the report and recommendation “[w]ithin fourteen days after being served with a copy.” *Id.*; *see also*

Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also DeLeon v. Strack*, 234 F.3d 84, 87 (2d Cir. 2000) (citing *United States v. Male Juvenile* (95-CR-1074), 121 F.3d 34, 38 (2d Cir. 1997)). The district court may adopt those parts of the report and recommendation to which no party had timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

III. Conclusion

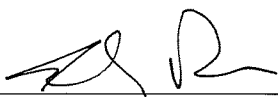
The Court has carefully reviewed Judge Parker's thorough and well-reasoned R&R and finds no error, clear or otherwise. Accordingly, the Court adopts the R&R in its entirety. Plaintiff's motion for judgment on the pleadings is DENIED and the Commissioner's motion for judgment on the pleadings is GRANTED.

The parties' failure to file written objections precludes appellate review of this decision. *PSG Poker, LLC v. DeRosa-Grund*, No. 06 Civ. 1104 (DLC), 2008 WL 3852051, at *3 (S.D.N.Y. Aug. 15, 2008) (citing *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)).

The Clerk of Court is respectfully directed to close the case.

It is SO ORDERED.

Dated: January 12, 2018
New York, New York


Edgardo Ramos, U.S.D.J.